

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

PHILLIP SIMS

CIVIL ACTION NO. 19-cv-0043

VERSUS

JUDGE FOOTE

JOHN DOE

MAGISTRATE JUDGE HORNSBY

MEMORANDUM ORDER

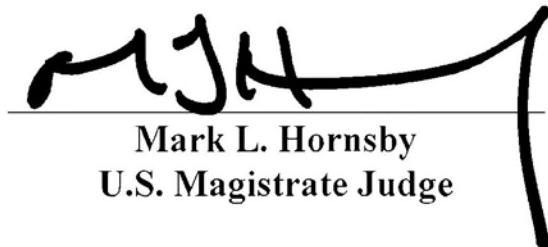
Phillip Sims (“Plaintiff”) filed suit in state court for damages arising out of a workplace accident in which he was injured. Plaintiff’s original complaint named John Doe, Big Boy Ranch, LLC, and ABC Insurance as defendants. In two subsequent amended complaints, Plaintiff identified Vine Oil and Gas, LP, as a defendant, identified Abner Haynes in place of John Doe, and identified Hallmark County Mutual Insurance Company in place of ABC Insurance Company.

Defendants Big Boy Ranch and Hallmark filed a notice of removal based on an assertion of diversity jurisdiction, which puts the burden on the removing party to prove complete diversity of citizenship of the parties and an amount in controversy over \$75,000. The court has issued a couple of orders that directed amendments of the notice of removal to address jurisdictions issues. The most recent Amended Notice of Removal (Doc. 15) adequately alleges the citizenship of Big Boy Ranch, LLC. It did not address the citizenship of Vine Oil &Gas, LP but noted that it is no longer a party because Plaintiff voluntarily dismissed Vine after the case was removed.

Jurisdiction is ordinarily determined in a removed case based on the facts that existed at the time of removal, but there is an exception for the dismissal of a non-diverse dispensable party. Moss v. Princip, 913 F.3d 508, 514-15 (5th Cir. 2019). This situation appears to fall within that exception, so the citizenship of Vine need not be alleged in the record. The court makes a preliminary finding that there is subject matter jurisdiction based on 28 USC § 1332. This finding is subject to reconsideration *de novo* or on appropriate motion.

The other defendants, except for Abner Haynes, have filed an answer. The court will set a scheduling conference once Mr. Haynes has filed an answer. If Plaintiff has not yet served Mr. Haynes, he should do so promptly. Federal Rule of Civil Procedure 4(m) allows 90 days from removal to complete service on the defendants. That deadline is only days away.

THUS DONE AND SIGNED in Shreveport, Louisiana, this 12th day of April, 2019.



Mark L. Hornsby
U.S. Magistrate Judge